Hyde Park Terrace Co. v. *Jackson Bros. Realty Co.*, 161 App. Div. 699, 14 N. Y. Supp. 1037. But this crude procedural device seems unnecessary, particularly under modern statutes allowing liberal joinder of parties plaintiff. The remedy for the promoters' wrong should be extended only to those individual shareholders who have been damaged thereby, and only to the extent to which each has been so damaged. See *Blum* v. *Whitney*, 185 N. Y. 232, 77 N. E. 1159. *Cf.* 8 COL. L. REV. 567.

CRIMINAL LAW — APPEAL — RIGHT OF ONE WHO HAS SERVED SENTENCE TO APPEAL. — The appellant, sentenced to imprisonment for a misdemeanor, after serving the sentence prosecuted an appeal within due time. *Held*, that the appeal be dismissed. *State* v. *Cohen*, 201 Pac. 1027 (Nev.).

An appeal after the payment of a fine imposed in a criminal action is generally denied as moot. *State* v. *Wells*, 127 Minn. 252, 149 N. W. 286; *State* v. *Westfall*, 37 Iowa, 575; *Batesburg* v. *Mitchell*, 58 S. C. 564, 37 S. E. 36. *Contra*, *Commonwealth* v. *Fleckner*, 167 Mass. 13, 44 N. E. 1053; *Johnson* v. *State*, 172 Ala. 424, 55 So. 226. It is arguable that the fine might be repaid, on a reversal, as money paid under corporal duress; in such a case an appeal would not be moot. But if the punishment is a sentence of imprisonment and sentence has been served, a reversal can give the accused no legal benefit. The stigma upon his name forms no part of the legal punishment intended; an appeal to remove it, therefore, involves no legal question and is moot. *Contra*, *Roby* v. *State*, 96 Wis. 667, 71 N. W. 1046. But should an appeal be dismissed on such technical grounds? The administration of justice must conform in some degree to the popular conception of what justice is. Courts sometimes do entertain moot appeals. See 34 HARV. L. REV. 416, 418. A wise rule would leave the allowing of such an appeal to the sound discretion of the court. And the result might well depend upon whether the defendant had availed himself of an opportunity to stay execution pending appeal. See 1912 NEV. REV. LAWS, § 7294.

DIVORCE — PROOF OF ADULTERY — PRESUMPTION OF CHILD'S LEGITIMACY. — 331 days after intercourse between husband and wife, the wife gave birth to a child. The husband sued for divorce on the ground of adultery, introducing no evidence except the unusually long period between intercourse and birth. It appeared by the testimony of experts that, although almost unprecedented, 331 days could not be called an impossible period of gestation. *Held*, that the petition be dismissed. *Gaskill* v. *Gaskill*, [1921] P. 425.

Where, as in the principal case, the fact of a child's illegitimacy must be proved as a necessary step in the proof of adultery, the courts, without inquiring whether they are justified in so doing, adopt the presumptions in favor of legitimacy which are applied in cases where the legitimacy is directly in issue. *Gordon* v. *Gordon*, [1903] P. 141; *Wallace* v. *Wallace*, 73 N. J. Eq. 403, 67 Atl. 612. One of these presumptions is that, if intercourse between husband and wife is proved or admitted, a child born to the wife is the husband's child, unless the husband is impotent or the spouses white and the child a mulatto. See *Gordon* v. *Gordon*, *supra*; *Estate of Walker*, 180 Cal. 478, 181 Pac. 792; *Estate of McNamara*, 181 Cal. 82, 183 Pac. 552. If the child is born within a normal period of gestation, the presumption is conclusive. When the interval is beyond the normal gestation period, the presumption would seem to lose its conclusive character, and the more abnormal the period the weaker should be the presumption. See HUBBACK, EVIDENCE OF SUCCESSION, 413. But there is no evidence to rebut such a presumption in the principal case, and if the presumption can properly be applied in such cases, the decree is correct. The presumption has no basis in logic. See *Estate of McNamara*, *supra*. It is justified by a policy to protect the inheritance of property, the integrity of the

family relation, and the personality of the child. See *Matter of Matthews*, 153 N. Y. 443, 47 N. E. 901; *Powell* v. *State*, 84 Ohio St. 165, 95 N. E. 660; Melvin, J., dissenting, in *Estate of McNamara*, *supra*. While the child's rights of substance are not directly involved in the principal case, it would seem proper to apply the presumption for the protection of the child's interests of personality.

EASEMENTS — EXTENT OF USER — ORDER TO COMPEL CLOSING OF GATE. — A had a right of way over B's land. In order to confine his live-stock, B fenced his land, leaving a gate to preserve the way. A refusing to close the gate, B brought a bill to compel A to do so. *Held*, that A must close the gate. *Geohegan* v. *Henry*, 55 Ir. L. J. Rep. 190.

The owner of the servient tenement may maintain gates across a way created by grant, if they are necessary to a reasonable enjoyment of his property and do not unduly interfere with the easement granted. *Green* v. *Goff*, 153 Ill. 534, 39 N. E. 975; *Blais* v. *Clare*. 207 Mass. 67, 92 N. E. 1009. See JONES, EASEMENTS, §§ 400-407. The right may, however, be expressly or impliedly negatived in the grant of the easement. See *Flaherty* v. *Fleming*, 58 W. Va. 669, 52 S. E. 857; *Dickinson* v. *Whiting*, 141 Mass. 414, 6 N. E. 92. The same rule should apply when the easement is acquired by prescription, though the way was totally unobstructed during the prescriptive period. The nature of the easement gained should govern, rather than the particular manner of use by which it was gained. *Luster* v. *Garner*, 128 Tenn. 160, 159 S. W. 604; *Ames* v. *Shaw*, 82 Me. 379, 19 Atl. 856. *Contra*, *Shivers* v. *Shivers*, 32 N. J. Eq. 578; *Fankboner* v. *Corder*, 127 Ind. 164, 26 N. E. 766. If it is once admitted that the maintenance of gates is reasonable under the circumstances, the owner of the easement must close them. *Mendelson* v. *McCabe*, 144 Cal. 230, 77 Pac. 915; *Griffin* v. *Gilchrist*, 29 R. I. 200, 69 Atl. 683; *Helwig* v. *Miller*, 47 Pa. Super. Ct. 171. Failure to do so is an abuse of his right, the repetition of which will be enjoined in order to prevent a multiplicity of petty actions at law.

EXECUTORS — LIABILITY TO ACCOUNT FOR PROFITS INDIRECTLY DERIVED FROM CONTROL OVER THE ESTATE. — The defendant Trusts Corporation held as executor a controlling interest in the stock, and thereby "carried on the business," of the W Corporation. The latter corporation, having a large sum on hand, deposited it with the defendant upon terms which "it was admitted were more profitable [to the W Corporation] than any that could have been made with a bank." The beneficiaries of the estate brought this bill, charging *inter alios* that the defendant would make a profit out of the deposit and because of its fiduciary position ought to have to account for it. *Held*, that this portion of the bill be dismissed. *Woods* v. *Toronto General Trusts Corporation*, 20 Ont. Weekly Notes, 431.

A trustee or other fiduciary may not retain any profit derived from dealings with the trust estate. *Magruder* v. *Drury*, 235 U. S. 106; SCOTT, CASES ON TRUSTS, 501; *Skinnell* v. *Mahoney*, 197 App. Div. 808, 189 N. Y. Supp. 845. See *Hand* v. *Allen*, 128 N. E. 305, 312 (Ill.). Nor may he keep profits derived immediately from his own property if they are obtained indirectly by virtue of some advantage given by his holding of the trust *res*. *Bay State Gas Co.* v. *Rogers*, 147 Fed. 557 (Circ. Ct., D. Mass.). See 20 HARV. L. REV. 337. The rule is one of precaution and is applied stringently because of the otherwise great possibility of abuse. Since in the principal case the stock in the W Corporation gave the defendant a potential control of the corporation's money, a decision for the plaintiff might upon the authorities have been expected. But it may be that the corporation was governed by a board of directors not subservient to the defendant. If that was so, the decision may be supported on the ground that, so long as it acts in good faith and not to the positive